

Meeting of the TUR Administrative Council

July 19, 2011

9:30 A.M. – 11:30 A.M.

100 Cambridge Street, 2nd Floor, Room A

Boston, MA 02114

Council Members

Philip Griffiths, Energy and Environmental Affairs (EEA); Sarah Weinstein [for Jim Colman], Department of Environmental Protection (MassDEP); Meg Blanchet, Department of Public Health (DPH); Adam Forkner, Housing & Economic Development (HED); Heather Rowe, Department of Labor Standards (DLS), Timothee Rodrique [for Kevin Partridge], Department of Fire Services (DFS)

Other Attendees

Suzi Peck (MassDEP); Rich Bizzozero (EEA); Michael Ellenbecker (TURI); Liz Harriman (TURI); Rachel Massey (TURI); Heather Tenney (TURI); Chris MacIsaac (OTA); Rick Reibstein (OTA); John Raschko (OTA); Sean Moynihan (MCTA); Ross Seavey (EEA); and Daniel Saulnier (OTA).

I. Welcome and introductions

Council meeting attendees introduced themselves. There was a quorum present for this meeting.

II. June 7, 2011 Council meeting minutes

There was a motion to accept the minutes from the June 7, 2011 Administrative Council meeting. The motion was seconded and the vote was unanimous to accept the minutes.

III. Executive Director's Report and Program Agency Updates

Executive Director's Update

- The Advisory Committee members discussed agency priority issues for FY 2012 at their meeting on June 21st (Note: One of these issues was priority user segments, and their comments will be included in the discussion at today's Council meeting). Given that the Council can designate up to 10 chemicals as Higher Hazard Substances (HHS) per year and each designation begins the process of considering the designation of Priority User Segments (PrUS), Advisory Committee members had the following suggestions for priorities:
 - Stay focused on toxics use reduction.
 - List HHSs strategically. When considering chemicals for listing, look at how the chemicals are used in Massachusetts. The TURA list of chemicals should not be a general list of chemicals not to use, but one that relates to what is happening in the state.
 - Work more closely with other state Boards or agencies to encourage more toxics use reduction.
 - Priority User Segment designation for Perchloroethylene is an opportunity to reach out to dry cleaners.

- Look at opportunities in areas not covered by TURA, specifically at what chemicals workers are being exposed to [ex. The program is looking at asthmagens and should also look into sensitizers].
- Study data from other agencies (i.e., DPH & OSHA) and incorporate this into future policy analyses.
- Could the program conduct a study in urban areas, similar to the study in Rhode Island that found trichloroethylene (TCE) users that were not known to regulators? (The Rhode Island study used air monitoring to find users of volatile chemicals).
- The TURA program could work with chemical suppliers and distributors, especially on TCE and other HHS to find acceptable alternatives.
- Look into alternatives to phthalates and brominated flame retardants.

OTA Update

- OTA has been busy on policy related issues, specifically with gathering information on state purchasing of Environmentally Preferable Purchasing (EPP) for Executive Orders (EO) 515 and 484. There is a challenge with the accounting system in getting the necessary data, specifically related to gaps in coding of purchases. The current code covers both cleaning supplies and chemicals, making it difficult to determine what is being purchased. A new code has been developed specifically for cleaning chemicals to aid in tracking in the future. Agencies are being educated on the purchases of chemicals.
- OTA has several interns assisting department staff on a variety of projects such as updating the TURA program site and OTA website, and analyzing TURA data (Section IV of Form S) for data provided to the Council.
- OTA is also working on the Small Business Assistance Program annual report, and a Barriers report on asthmagens. The TURA program agencies have also begun work on the 2011 report to the Governor.
- OTA is planning a large event (~500 attendees) co-sponsored with the Department of Energy Resources in Central Massachusetts that will focus on renewable energy and energy efficiency opportunities for industry, and will include vendor displays.

MassDEP Update

- The 2009 TURA Data release has been posted on the MassDEP website. Overall, the data shows that the TURA law is still having an impact on reducing toxics. MassDEP will be developing a report on the planning data.
- What is the biggest thing we have learned? There has been continued progress in TURA, incentives in the Act are working, and 60% reduction since 2000 in on-site releases are a testament of the program addressing environmental issues.
- Why do we measure from a 2000 baseline instead of 1990 (the beginning of the program)? The program redefined a “Core Group” of consistently covered chemicals and company categories in order to track trends without distortions caused by changes in the chemicals and industries covered by the Act. By the year 2000 the Core Group defined in 1990 was too small to be significant, so the trend analysis was begun anew.

- RY2010 reports were due on July 1, 2011, and we appear to have .complete reports from all except a dozen companies that we expected to receive reports from. The electronic systems eDEP and the TRI ME node seem to be working very well so we hope to release the 2010 data earlier than we have done in the past.

TURI Update

- Distributed copies of the *Decision-Making Under TURA* document and The Toxics Use Reduction Act.
- TURI is updating their website and expect to have it completed by September.
- In FY12 there will be a focus on carcinogens and related health information. TURI is undertaking a carcinogen study that will identify substances that are associated with cancer, and look into uses of those substances. DPH expressed interest in obtaining information that is collected by TURI.
- Proposals for the Community and Academic grant programs are due by the end of July.
- TURI's strategic plan for the year focuses on Council priorities; including military products supply chain, hexavalent chromium, perchloroethylene, etc.
- There will be a focus group on worker issues around toxic chemicals.
- TURI and OTA are working on a model TUR plan for dry cleaners. There will be a Nanomaterials Environmental, Health, & Safety symposium in Boston in August hosted by the UMass Lowell Center for High-Rate Nanomanufacturing. NIOSH, NSF and TURI are cosponsors.

IV. Volatile Methyl Siloxanes – Update

- The Science Advisory Board (SAB) is evaluating alternatives to listed chemicals to see if there are hazardous chemicals that should be added to the TURA list. They are currently evaluating a group of halogenated compounds, and Volatile Methyl Siloxanes (VMS) (alternatives to TCE or Perchloroethylene in dry cleaning and metal cleaning).
- They are recommending the listing of the linear VMS HDMS and will be continuing their evaluation of other linear and cyclic VMS at their next few meetings. Other government programs outside of Massachusetts are also studying VMSs.
- Industry is trying to fill in the current data gaps; there has not been a lot of independent testing of VMS.
- A question was raised about the SAB membership; there are appointments that are awaiting approval and there is a need for another industry representative.

V. Priority User Segment – TCE in Cleaning: Final Recommendation and Council Vote

- OTA presented their recommendation that the Priority User Segment for TCE in cleaning be established. It was noted that the window is closing on the state's ability to designate a priority user segment for TCE, cadmium or cadmium compounds. If that decision is not made by this fall, there will be no PrUS option for these substances.
- OTA looked into the fee issue with the EEA counsel. The Counsel's opinion is that the Administrative Council has both the authority and responsibility to set fees for companies in

priority user segments, which includes both Large Quantity Toxics Users and businesses with less than 10 employees. They can adjust fees for the proper administration of the Toxics Use Reduction Act. The Council has the authority and obligation to set fees for these facilities. The fees cannot be waived. The fee for companies in priority user segments cannot be set at \$0, but can be phased in over time.

- The first point of the discussion of designating a priority user segment for the use of TCE in cleaning operations deals with agency resources. Some of the highlights of this discussion included:
 - What is the impact of not designating a priority user segment?
 - What are the minimum resources needed to meet the guidelines? If resources were available, how could the program maximize the results? What is the resource cost to the agencies?
 - Previously MassDEP did a mailing to 2,000 TCE users, OTA made phone calls to TCE users, and the TURI lab also did outreach.
 - DEP reported that the volume and size of the programmatic changes at MassDEP due to budget cuts are significant. Estimating costs is a challenge; it almost always costs more than anticipated. Minimal investments won't reap many benefits. MassDEP may not have enough resources to enforce the priority user segment. While OTA and TURI do have the necessary resources to provide assistance.
 - OTA's opinion is that a minimum investment in resources will be sufficient to reinforce the message of toxics use reduction for TCE in cleaning operations. OTA estimates that there are currently 152 companies that use TCE in cleaning operations: 40 using more than 1,000 pounds, 6 already reporting, 2-8 with less than 10 employees, and 26-32 who perhaps should be reporting but are not; 112 facilities are estimated to use less than 1,000 lbs of TCE or to be using it for something other than cleaning.
 - There is an optional authority for MassDEP to extend reporting to small quantity users (< 1000 lbs) and require additional reporting on byproducts.
 - There is also authority in the Act for the Council to lower the reporting threshold, separate from the PrUS authority. OTA did not examine that option. (The Act charges the Institute with that analysis).
 - The program will follow up with the facilities that appear to be using reportable quantities of TCE but are not currently reporting
 - Was there any data from MEMA or Right-to-Know data used in the study? The TIER II data was not helpful in identifying users of TCE for cleaning operations, though we are waiting for more recent data.
 - Designation may create a burden for small businesses. There are additional costs to smaller businesses on top of the potential fees. Companies will have to expend resources for filing, including employee staff time.

- Companies with less than 10 employees that use TCE in cleaning operations are a small universe that might benefit from the designation. Could resources be made available without designating a priority user segment? Rich said they could, but mentioned the difficulty of getting companies to make changes without having a regulatory component. TURI said their lab has heard from some companies that they won't switch until there is a regulatory driver.
- MassDEP mentioned past successes in phasing in regulations: companies were given the opportunity to voluntarily comply with less stringent requirements with the understanding that if they did not do so they would be forced to comply with more stringent requirements at a later date. This model was used successfully with the dentists and mercury. By the time the regulations were promulgated a significant proportion of the universe was in compliance.
- Is there authority to designate a priority user segment and delay implementation to a later date? Companies would still be required to report, although the fees could be phased in.
- What if the Council decided to lower the HHS reporting threshold to 500 pounds? Companies with less than ten employees would not be included.
- TCE is dangerous and needs to be strictly regulated. There are options to consider for the future. There is both a fee and a planning burden. It's important to reduce the planning burden for small quantity users. There are ways to do this without regulatory action.
- The Council chair commented that under different economic and state resource circumstances, it might make perfect sense to designate this priority user segment, and asked for Council member opinions on the issue.
 - Housing and Economic Development expressed concern about the impact on small businesses and the costs associated with compliance.
 - What is the return from adding the 2-8 business? The burdens will be phased in to give companies time and incentive to find alternatives. There may be a better economic environment in 2 years, but that is not realistic for small businesses to assume.
 - The planning process will help companies identify alternative processes and cleaning chemistries. Drop-in substitutes are also available.
 - Should the Council approve it and let the discussion go to public comment?
 - There could be pushback on the TURA program if the priority user segment is designated at this time.
 - There are challenges with promulgating regulations that charge new fees and create other monetary impacts. Designating a PrUS will cause a regulatory burden and the results may not be enough to support it.
 - The Advisory Committee is in full support for designating this priority user segment. They voted to support it in April and reaffirmed in June. They did have a small business representative at the meetings.

- In addition, the Alliance for a Healthy Tomorrow submitted a letter to the Council supporting the PrUS designation; the letter was distributed to Council members.
- The summary of the OTA and Advisory Committee recommendations are:
 - A regulatory driver is needed to enhance outreach and generate interest in switching to safer alternatives..
 - “OTA and TURI have excellent capacity and sufficient resources to provide assistance to this priority user segment” Designating TCE in cleaning as a priority user segment is consistent with the intent of the 2006 amendments – to focus the program on chemical use of high concern.
- MassDEP reiterated that they don’t have the resources to enforce and that there should not be regulations promulgated that MassDEP can’t enforce because it won’t give you the benefits that you want. What should the TURA program do for companies using HHSs? Try everything we can to work with TCE users on a voluntary basis.
- There was a proposal to do something similar to MassDEP’s approach to the dentists and mercury with other HHS, letting users know that priority user segments would be designated in the future which would give facilities time to reduce their use to below thresholds before the regulations went into effect..
- The Council needs more of a long range strategy for HHS.
- The health impacts of TCE use need to be stressed. Is there another way for the Council to address TCE use other than priority user segments? For example, the Council could lower the reporting threshold to 100 lbs.

Vote: There was a motion to not designate TCE use in cleaning operations as a priority user segment.

The Council voted unanimously (6-0) to not designate TCE in cleaning operations as a priority user segment.

➤ ***Other items of discussion following the vote:***

- Given the 4 year limit on designating a PrUS, TURI and OTA should bring future recommendations for HHS/Priority User Segments well in advance of the 4 year deadline. A suggestion was made to state intent to designate a PrUS at the time of HHS designation. If recommendations are made earlier, would it tie the hands of the Council (if there are changes to the membership)? Recommendations can be rescinded prior to promulgation.
- A public strategic plan could move us towards program goals.
- Questions to be addressed in the future: Could lower thresholds be established? New regulations on small business are not popular. What efforts can MassDEP devote to enforcement?
- OTA will follow up with the 86 companies it estimates use TCE in cleaning operations. MCTA offered assistance to communicate with their membership.

➤ **Council Member Agency Updates**

- Timothee Rodrique from the Department of Fire Services mentioned a few issues from their agency:
- There is a problem with 2 component spray polyurethane foam insulation specifically the exothermic reaction while the insulation cures. Excessive heat buildup due to improper installation has caused 4 fires and one fatality.
 - There have been problems with solar panel installations. Firefighters have had problems ventilating roofs and there is limited roof access in some installations where roofs are covered with panels. California has guidelines on this problem.
 - DFS is putting TURA and OTA into their guidelines for chemical process regulations that are being promulgated.
 - There have been a few fires started by incorrectly installed solar arrays.

VI. Schedule next meeting

- The next meeting will be Tuesday, September 20, 2011 from 9:30 a.m. to 11:30 a.m. at 100 Cambridge Street, 2nd Floor, Conference Room A. The meeting was subsequently rescheduled to December 7, 2011.

VII. Adjourn

Handouts:

- Meeting Agenda
- Draft Minutes from the June 7, 2011 Administrative Council meeting
- Massachusetts Toxics Use Reduction Act
- Decision-Making Under TURA: Process Overview and Reference Guide
- OTA Recommendation Concerning Priority User Designation of Trichloroethylene
- Draft: TUR Fee for Companies with less Than 10 Employees
- Alliance For A Healthy Tomorrow Letter to support designating a Priority User Segment for TCE used in cleaning operations
- TUR Fee Recommendation for Companies With Less Than 10 Employees (Draft)
- Priority User Segment Recommendation for Trichloroethylene: Summary of Recommendations